

Message Text

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PAGE 01 BONN 07151 01 OF 02 290010Z

71

ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 PM-04 H-02 INR-07 L-03 NSAE-00

NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 ACDA-07 SAJ-01

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R 281730Z APR 76

FM AMEMBASSY BONN

TO SECSTATE WASHDC 8454

INFO SECDEF WASHDC

USMISSION NATO BRUSSELS

USDEL MBFR VIENNA

USNMR SHAPE

CINC EUR VAIHINGEN

CINC USAREUR HEIDELBERG

CINC USAFE RAMSTEIN

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E.O. 11652: N/A

TAGS: MORG, NATO, GW

SUBJECT: BUNDESWEHR: AMENDED CONSCIENTIOUS OBJECTORS
PROCEDURE MAY RESULT IN CONSTITUTIONAL CONFLICT

REF: A-109 DTG 20 APRIL 1976

BEGIN SUMMARY: THE SIMPLIFIED CONSCIENTIOUS OBJECTOR
PROCEDURE WHICH PERMITS A PROSPECTIVE DRAFTEE TO OPT
FOR ALTERNATIVE CIVILIAN SERVICE RATHER THAN MILITARY
SERVICE HAS BEEN A SOURCE OF CONTINUING POLITICAL SPAR-
RING IN THE FRG SINCE RECEIVING BUNDESTAG APPROVAL ON
APRIL 8. THE CDU/CSU OPPOSITION SEEMS INTENT UPON
MAKING BUNDESRAT CONSENT TO THE LAW A CONSTITUTIONAL
ISSUE. THE GOVERNMENT DISAGREES THAT THE BUNDESRAT
MUST ALSO APPROVE THE LAW, BUT IT APPEARS LIKELY THAT
THE FEDERAL CONSTITUTIONAL COURT MAY EVENTUALLY HAVE TO
RULE ON THE QUESTION. THE DIFFERENCE OF APPROACH ON
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PAGE 02 BONN 07151 01 OF 02 290010Z

THE CONSCIENTIOUS OBJECTOR PROBLEM IS ONE OF THE FEW

DEFENSE ISSUES WHICH THE OPPOSITION HAS TO USE AGAINST
THE GOVERNMENT IN THE ELECTION CAMPAIGN. END SUMMARY.

1. THE POLITICAL SPARRING BETWEEN COALITION AND OPPOSITION HAS CONTINUED FOLLOWING PASSAGE OF THE CONSCIENTIOUS OBJECTORS AMENDMENT TO THE CONSCRIPTION LAW BY THE BUNDESTAG ON APRIL 8 WHICH IS SCHEDULED TO TAKE EFFECT ON OCTOBER 1 (REFAIR). BESIDES CONTINUING TO CONDEMN THE LAW AS ILL-ADVISED AND AN OPEN INVITATION FOR SHIRKING BY PROSPECTIVE DRAFTEES, THE CDU/CSU OPPOSITION HAS NOW TAKEN THE POSITION THAT THE BUNDESRAT, IN WHICH IT ENJOYS A 26-15 MAJORITY, MUST ALSO APPROVE THE LAW. THE ARGUMENT ADVANCED TO SUPPORT THIS POSITION IS THAT THE VARIOUS STATES PROVIDE A REPRESENTATIVE ON THE CURRENT EXAMINATION BOARDS WHO ALSO SERVES AS DEPUTY CHAIRMAN OF THE BOARD. IF THE WORK OF THE BOARD IS NOW LARGELY SUPERFLUOUS -- AS FORESEEN IN THE NEW LAW -- THEN, ARGUES THE OPPOSITION, STATE INTERESTS ARE AFFECTED.

2. THE SPD/FDP GOVERNING COALITION, ON THE OTHER HAND, ARGUES THAT THE BUNDESRAT DOES NOT HAVE TO APPROVE THE LAW. THE COALITION CITES ARTICLE 73 OF THE BASIC LAW WHICH, INTER ALI, GIVES THE FEDERATION EXCLUSIVE POWER TO LEGISLATE IN FOREIGN AFFAIRS AS WELL AS DEFENSE MATTERS.

3. THE BUNDESRAT DEFENSE COMMITTEE, CHAIRED BY LOWER SAXONY MINISTER PRESIDENT ALBRECHT, WILL CONSIDER WHAT ACTION TO RECOMMEND WHEN IT MEETS ON APRIL 30. IT IS EXPECTED THAT THE RECOMMENDATION WILL BE TO CALL FOR THE CONVENING OF THE MEDIATION COMMITTEE. THE BUNDESRAT AS A WHOLE WILL CONSIDER THE MATTER IN ITS MAY 14 SESSION.

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PAGE 01 BONN 07151 02 OF 02 290015Z

71

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NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 ACDA-07 SAJ-01

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LIMITED OFFICIAL USE SECTION 02 OF 02 BONN 07151

4. SHOULD THE BUNDESRAT NOT AGREE TO THE BILL IN THE FORM IN WHICH THE BUNDESTAG HAS ACCEPTED IT, IT MAY EXERCISE A RIGHT OF VETO. THIS MAY, HOWEVER, ONLY BE EXERCISED AFTER A MEDIATION PROCEDURE HAS BEEN INITIATED AND COMPLETED. THIS PROCEDURE CONSISTS OF THE CONVOCA-TION OF A MEDIATION COMMITTEE WITH ELEVEN MEMBERS OF THE BUNDESTAG AND ELEVEN MEMBERS OF THE BUNDESRAT. THE MEDIATION COMMITTEE HAS THE TASK OF TRYING TO ARRIVE AT AN UNDERSTANDING BETWEEN THE TWO LEGISLATIVE BODIES.

5. IF NO UNDERSTANDING SHOULD BE ARRIVED AT, I.E., SHOULD THE MEDIATION PROCEEDINGS BE TERMINATED WITHOUT RESULT, THE BUNDESRAT IS ENTITLED TO VETO THE BILL AS PASSED BY THE BUNDESTAG.

6. SHOULD THE BUNDESTAG NOT RECOGNIZE THE BUNDESRAT'S VETO AND REPASS THE LAW, PRESIDENT SCHEEL WILL
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PAGE 02 BONN 07151 02 OF 02 290015Z

THEN HAVE TO DECIDE WHETHER TO SIGN IT. THIS MAY PROVE TO BE A DIFFICULT DECISION FOR HIM GIVEN THE PREVAILING POLITICAL CLIMWTE IN THE FRG. SHOULD HE DECIDE TO SIGN IT--WHICH THE OPPOSITION APPARENTLY ANTICIPATES--THEN HIS DECISION MAY BE APPEALED TO THE FEDERAL CONSTITUTIONAL COURT IN KARLSRUHE FOR A RULING. OPPOSITION DEFENSE SPOKESMAN WOERNER HAS ALREADY INDICATED THAT THE OPPOSI-TION WOULD IN FACT MAKE SUCH AN APPEAL.

7. COMMENT: ADMITTEDLY, THE SCENARIO OUTLINED ABOVE LEADING TO A CONSTITUTIONAL ISSUE IS SPECULATIVE AT THIS TIME, BUT THE CDU/CSU HAS BEEN SIGNALLING ITS INTENTIONS

WITH PRESS BACKGROUNDEERS AND STATEMENTS BY PARTY SPOKES-
MEN. MOREOVER, THE OPPOSITION HAS VERY FEW DEFENSE
ISSUES WITH WHICH TO HARASS THE GOVERNMENT. THE CON-
SCIENTIOUS OBJECTOR ISSUE HAPPENS TO BE ONE. WITH THE
STEEP RISE (25 PERCENT) IN CONSCIENTIOUS OBJECTOR APPLI-
CATIONS FOR THE FIRST QUARTER OF 1976 AND ITS WORST CASE
ANALYSIS OF THE DIRE RESULTS TO BE EXPECTED IF THE
AMENDED PROCEDURE BECOMES EFFECTIVE ON OCTOBER 1, IT
SEEMS LIKELY THAT THE OPPOSITION WILL CONTINUE TO
HAMMER AWAY AT THIS ISSUE WITH THE CHARGE THAT THE GOVER-
NMENT IS JEOPARDIZING THE FRG'S EXTERNAL SECURITY.
HILLENBRAND

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW, MILITARY PERSONNEL, CONSCRIPTION, POLICIES, POLITICAL SITUATION, MILITARY DEFERMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 28 APR 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: ShawDG
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976BONN07151
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760161-1092
From: BONN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760415/aaaaalyk.tel
Line Count: 182
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: ShawDG
Review Comment: n/a
Review Content Flags:
Review Date: 10 FEB 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <10 FEB 2004 by morefirh>; APPROVED <27 JUL 2004 by ShawDG>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: BUNDESWEHR: AMENDED CONSCIENTIOUS OBJECTORS PROCEDURE MAY RESULT IN CONSTITUTIONAL CONFLICT
TAGS: MORG, GE, NATO
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006